To

The Working Group on Arbitrary Detention

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Comments on Islamic Republic of Iran's 13 April 2006 response to the case of
MS. KOBRA RAHMANPOUR
to be considered during the Working Group's 45th session from 8-12 May 2006

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The Working Group on Arbitrary Detention [hereafter WGAD] has forwarded the Islamic Republic of Iran's Government's [hereafter the Government] 13 April 2006 response to Ms. Kobra Rahmanpour death penalty case for final observations and comments.

Based on WGAD's working methods, upon transmission of the communication, the Government concerned is invited to present its comments and observations on the allegations made within 90 days. Ms. Kobra Rahmanpour's case was transmitted to the Government on 7 October 2006 and the Government's response was due by 10 January 2006. As no extension of time was requested, the Government's response to Ms. Kobra Rahmanpour's death penalty case is therefore 90 days late.

Worse still is the content of the response which as discussed below not only is drafted cursorily without relying on any original records of the case but also is full of false claims and/or misleadingly incorrect terminology.

The Government incorrectly states Ms. Kobra Rahmanpour's conviction as "first degree murder" which is commonly understood as the intentional killing of another person with premeditations and connotes the most serious type of murder. Such terminology not only does not exist in Iran's

Islamic criminal system, but also is not equivalent to any of the three types of murder defined in the Islamic Penal Code of Iran, namely "intentional murder" [*qatl-e amd*] [article 206] "quasi-intentional murder" [*qatl-e shibh-e amd*] and "murder by mistake" [*qatl-e khata*] [article 204]. "Intentional murder", the crime that Ms. Kobra Rahmanpour was actually convicted of, is defined in the Islamic Penal Code of Iran ever so broadly as to also include many forms of unintentional and inculpable murder. (see pages 6, 16-22 of 20 April 2004 submission and the summary of violations noted below)

More importantly, as Ms. Kobra Rahmanpour course of trial has shown,[1] nor has there been any evidence that she had killed her mother-in-law with any deliberate intention or premeditation or that her act had been anything other than a spurious act of self-defense gone irrationally out of control due to a history of previous abuse by the victim and severe emotional stress. No other ordinary person could have acted rationally under those circumstances either.

The Government's claim that Ms. Kobra Rahmanpour's death sentence was sustained by the Supreme Court "almost one year ago" is also false and incorrectly suggests a much shorter detention and death row period. Ms. Kobra Rahmanpour has been in detention since 5 November 2000 when she was arrested based on her husband's request and merely on suspicion of killing her mother-in-law. Branch 1608 of the Tehran's Criminal Court pronounced her guilty of "intentionally murdering" (*qatl-e amd*) her mother-in-law on 1 January 2002 and sentenced her to the mandatory death penalty (*qisas-e-nafs*). The Supreme Court of Iran rejected her appeal and upheld the capital sentence summarily without a hearing on 22 August 2002. (see pages 4-8 of the 20 April 2004 Urgent Appeal)

Contrary to the Government's claim that despite the Supreme Court's confirmation of the capital sentence "it was not carried out", judicial authorities did issue a death warrant for Ms. Kobra Rahmanpour's on 31 December 2003 and prison authorities did attempt to execute her by hanging on that day although unsuccessfully. (see pages 7 & 9 of the 20 April 2004 submission)

In the Islamic criminal system of Iran, a confirmed *qisas* death sentence is carried out upon certification by the victim's heirs that they want *qisas* of the condemned. Kobra Rahmanpour's 31 December 2003 death warrant too came shortly after her former husband and five in-laws presented the required *qisas* demand documentation to judicial authorities.

The Government is right in suggesting that the Head of the Judiciary directly ordered the stay of Ms. Kobra Rahmanpour's execution. But it incorrectly suggests that the stay was issued based on a mechanism established by the state to consider clemency for or commutation or pardon of death row prisoners.

[1] When the author of the present comments submitted her 20 April 2004 Urgent Appeal on behalf of Ms. Kobra Rahmanpour, she did not have access to press reports of her actual trial which took place in four sessions from 21 August to 27 December 2001 with only the first being public. However, since then, due to Iran Newspaper's (iran-newspaper.com) expansion of its electronic archives, more information about the course of the trial has become accessible.

In the Islamic Penal Code of Iran once a *qisas* sentence is confirmed, the state, regardless of all circumstances, can neither pardon nor commute that sentence or grant clemency. That prerogative belongs solely to the "victim's heirs" who can either demand the condemned's *qisas* or spare his/her life in exchange for monetary compensation (*diyeh*) or gratuitously. As a matter of fact, the victim's heirs' "right" to inflict *qisas* is so supreme that even when all but one of the heirs insists on *qisas*, the condemned is put to death pending the persisting heir's payment of the other heirs' share of *diyeh* out of his or her own pocket. In case of the heirs being minor and thus legally incompetent to decide on *qisas* or pardon of the condemned too, *qisas* is not postponed. In that case too the adult heirs are required to deposit the minors' shares in the bank so that when they reach maturity they still can receive their share of *diyeh* if they decide so in the absence of the executed culprit. The victim's heirs are also allowed to carry out the death sentence themselves.

Therefore, once a *qisas* sentence is confirmed, all that the condemned is left with, as Kobra Rahmanpour's December 2003 attempted execution attest to, is to wait for the victim's heirs' certified decision. The uncommon and exceptional reprieve that Kobra Rahmanpour received on 4 January 2004 from the Head of the Judiciary, Ayatollah Mahmoud Hashemi Shahroudi, was merely consequential to her failed execution and to vast public outrage nationally and internationally. Nor was the reprieve anything more than a bit more time for her to plead with the victim's heirs a bit more.

The Arbitration Council [*shoraye hale ikhtilaf*] too was not even in the picture until 21 June 2004, following the victim's heirs' yet another official certification in mid April 2004 that they want Kobra Rahmanpour executed. Contrary to Government's claim, neither then nor presently the Arbitration Council's mandate does not include intervention in *qisas* matters, much less a "relevant established mechanism" to do so. (see author's 18 April 2005 Update)

The Government correctly states that the Arbitration Council's efforts have failed. Of the three sessions that the Arbitration Council had called for this purpose (on 24 October 2004, 5 March 2005, 18 July 2005), except for a few precious moments for Kobra Rahmanpour to embrace her parents and brother after years of being deprived of physical contact with them, nothing was accomplished. The first one was cancelled due to the victim's heirs' failure to attend and in the last two the victim's heirs insisted that they would never forgo their "legal right" to put Kobra Rahmanpour to death. (see author's 18 April and 25 July 2005 Updates),

However the Government is wrong in stating that "Arbitration efforts are still ongoing and the sentence is still stayed". Since shortly before the Government's 13 April 2006 response to WGAD, Ms. Kobra Rahmanpour's lawyer has repeatedly informed the press that the Arbitration Council has officially concluded its role in Ms. Kobra Rahmanpour's case and has returned her file back to the Unit for the Enforcement of Judgments (*dayereh-e Ijray'e Ahkam*). (see attached press reports of 10, 11, and 22 April 2006) .

Thus, the Government's claim that Ms. Kobra Rahmanpour has been enjoying the rights stipulated in articles 7 and 8 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty is entirely untrue and baseless. So is the extremely offensive and absurd assertion that Kobra Rahmanpour's execution is an internationally recognized measure to combat violence against women.

For countries like Iran which have not abolished the death penalty, UN human rights bodies have outlined relevant international human rights standards to implement. These concern an obligation not to impose the death penalty for any but the most serious crimes, to ensure that due process safeguards are applied to the highest standard in all death penalty legal proceedings, and to establish a moratorium on executions, with a view to completely abolishing the death penalty. States which retain the death penalty shall also provide an effective remedy to persons who are wrongfully sentenced to the death or have received the death penalty following an unfair trial.

The UN International Covenant on Civil and Political Rights (ICCPR) adopted by the UN General Assembly in December 1966 is one of the international treaties that sets forth non-derogable safeguards and restrictions on death penalty, including in Article 6 (restrictions on imposition of death penalty and the right to seek clemency), Article 14 (minimum guarantees required for a fair trial), Article 9 (prohibition of arbitrary arrest and detention), Article 7 (prohibition of torture and inhuman treatment) and Article 2 (the right to nondiscrimination and an effective remedy).

Iran became a party to ICCPR on 24 June 1975. As a party, the Iranian state is obligated to ensure that its death penalty laws are in conformity with the relevant rights protected in ICCPR and that all defendants facing execution receive a trial that conforms to the highest standards of fairness protected in this treaty.

According to the methods of work of the Group, deprivation of liberty is arbitrary if a case falls into one of the following three categories:

> A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him)(Category I);
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> B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);
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> C) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

Ms. Kobra Rahmanpour's arbitrary detention falls into Category III because from the moment of her apprehension and throughout the pretrial, actual trial, and post-trail stages her progress through the criminal system of Iran has been marked by numerous human rights violations as summarized below:

- Detention of a suspect based on "the request of victim's heirs" [former husband in Kobra Rahmanpour's case] although consistent with Iran's domestic criminal procedure codes, is in violation of Article 9(1) of the ICCPR which prohibits arbitrary detention. So is mandatory pre-trial detention of all capital crime, including *qisas-e-nafs*, suspects [fourteen months in Kobra Rahmanpour's case]. Articles 9(3) & (4) & (5) of the ICCPR prohibit mandatory detention of anyone, guarantee everyone's right to challenge his or her detention in court, and provides the right to compensation for unlawfully detained persons.
- While access to immediate legal representation upon detention and adequate opportunity to prepare a defense thereafter is an essential safeguard for a fair trial (Articles 14(3)(b), (d), (e) of the ICCPR), Iran's laws do not give effect to these rights. As with all criminal suspects, Kobra Rahmanpour too could not access a lawyer during the so-called investigation stage of the proceedings. Throughout this stage, she was detained incommunicado to confess her alleged crime, further violating her right to presumption of innocence and to not self-incriminate (Articles 14(2) and 14(3)(g) of the ICCPR). At later stages too her lawyers were denied access and facilities to potentially exonerating evidence. Nor were they given the opportunity to examine all the witnesses and experts at trial or any consideration was given to their oral and written defenses.
- Being tried during a period that Iran's criminal system lacked a separate prosecution service, Kobra Rahmanpour's trial lacked even an appearance of independence, impartiality, and presumption of innocence protected by Articles 14(1) & (2) of the ICCPR. Nor was her trial entirely public or any justification given for the prolonged ten-month pretrial period and the four month actual trial period.
- International standards require that in death penalty cases the right of appeal must include a review both of the factual and legal aspects of the case by a higher instance. Under Iran's laws death sentences are reviewed by the Supreme Court only on legal aspects of the case. As usual, Kobra Rahmanpour's appeal review was conducted secretively and without a hearing.
- Contrary to Article 6(4) of the ICCPR which guarantees that anyone sentenced to death shall have the right to seek clemency from the state, the Iranian state has denied that right to all persons condemned to the *qisas* death sentence.
- Under Iran's *qisas* laws, clemency is the exclusive right of the victim's heirs which not only does not satisfy international standards but itself constitutes a form of torture in violation of Article 7 of the ICCPR. If holding a gun against someone's head in an

interrogation room is torture, then giving a noose to the victims' heirs to hold it on top of a person's head for years with the anticipation to either hang her at an unknown time or pardon her just in the nick of time with the noose tied around their neck, must constitute torture too.

- Nor does the ad hoc reprieve so far granted to Ms. Kobra Rahmanpour satisfy international standards. Not only has this unpredictable and uncertain reprieve has predictably had no positive results, it has not affected nor intended to affect her arbitrary detention.

The WGAD does not have a mandate to render an opinion about the fairness of the charges made against detainees. However, the arbitrary *qisas* murder laws under which Ms. Kobra Rahmanpour's was arrested, detained, prosecuted, convicted and denied clemency have rendered her detention far more arbitrary than a person convicted of murder under an ordinary criminal systems. In fact, Iran's *qisas* laws are so inherently at variance with international standards that no detainee charged with intentional murder can receive a fair trial:

- First and foremost difference between Iran's *qisas* laws and international standards is the definition of intentional murder. Under international standards the term "intentional" is equated with premeditation and is understood as deliberate intention to kill. But in the *qisas* laws of Iran "Intentional murder" is defined in such dangerously broad terms that even if such crucial elements as premeditation and deliberate intention to kill are missing the murder can still be categorized as "intentional". In most cases, the use of a deadly weapon such as a knife or a blow to the head is considered sufficient to call a murder "intentional".

- Furthermore, while mandatory sentencing for capital crimes is prohibited internationally, under the *qisas* laws of Iran any person who is found guilty of "intentional murder" is mandatorily and indifferently sentenced to death. The law does not allow for any discretion on the part of the judge to evaluate possible mitigating circumstances and reduce the sentence.

- Nor are the ten or so exceptions which are stipulated in the Islamic Penal Code and which exempt the perpetrators from prosecution or reduce their sentence to monetary compensation (*diyeh*) satisfy international standards. Some even further flout them. Most of these exceptions are applicable to predefined groups (fathers who kill their children, minors who kill, Muslims who kill non-Muslims, husbands who kill adulterous wives, etc). Others are rarely applicable due to their narrow interpretations of them in *fiqh* [Islamic jurisprudence]. "Insanity" [Articles 51 & 221], for example, which Kobra Rahmanpour's lawyers invoked at her trial and which was summarily rejected, is said to be only applicable to people who are literally insane. "Legitimate self-defense" [Articles 61 & 629], the other exception invoked at Kobra Rahmanpour's trial is seldom applied too. The only few known instances of their application has been exclusively in cases of men who have killed premeditatedly and brutally for "honor and chastity" reasons. All

woman defendants so far known to have had credible claims of self-defense, previous abuse by the victims and emotional stress at the time of the killing, have been denied the benefit of these exceptions. [see: Amnesty International 13/05/2005 Iran: Too little, too late -- Afsaneh Norouzi's death sentence and pardon (REPORTS), 13 May 2005].

- Another hazardous discrepancy lies in the standard of proof used to secure "intentional murder" convictions. International standards require that in intentional murder, the defendants' guilt must be proven beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. Under Iran's *qisas* laws "intentional murder" is proven by any of the following: a single confession, testimony of two male witnesses, judge's own knowledge, and oath when other evidence is doubtful. The most commonly used proof is confession, which as evident in Kobra Rahmanpour's case, is routinely extorted under compulsion upon arrest. Suspects who do not confess are routinely subjected to torture and other forms of ill-treatment, including prolonged detention.

Based on the above and in view of the fact that with more than eighty legislated capital "crimes", Iran's criminal system has more capital crimes than all countries retaining the death penalty together, that all capital crimes are subject to mandatory detention before and during trial and in *qisas* cases until an uncertain time that their execution is carried out, effectively by the victim's heirs, and that people are being detained in staggeringly high numbers for capital crimes (particularly for murder and drug trafficking), it is requested that the WGAD:

1- declare Ms. Kobra Rahmanpour's detention arbitrary;

2- recommend measures to the Government necessary for reparation of the violations suffered by Ms. Kobra Rahmanpour, in the least her immediate release from detention,

3- recommend that the Government adopt sweeping legislative and other measures that ensure the non-repetition of the multitude of violations suffered by Ms. Kobra Rahmanpour and potentially by thousands of other Iranian citizens prosecuted for capital crimes every year.

Respectfully submitted,

Deljou Abadi date: May 3, 2006